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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/588,428	08/04/2006	Hiroshi Nagai	SHOBA6.001APC	9228
20995 7590 12/08/2009 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER PERREIRA, MELISSA JEAN				
ART UNIT		PAPER NUMBER		
1618				
NOTIFICATION DATE		DELIVERY MODE		
12/08/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/588,428

Applicant(s)

NAGAI ET AL.

Examiner

MELISSA PERREIRA

Art Unit

1618

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 November 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 2 and 5-7.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
see below.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Michael G. Hartley/
Supervisory Patent Examiner, Art Unit 1618

/Melissa Perreira/
Examiner, Art Unit 1618

Claims 1,2 and 5-7 under 35 U.S.C. 103(a) as being unpatentable over Zeyuan et al. (J. Argic. Food Chem. 1998, 46, 3875-3878) and Xia (CN1435125; derwent Acc No 2004-023802) in view of Suzuki et al. (J. Argic. Food Chem. 2000, 48, 5649-5653) and in further view of Iwasaki et al. (US 7,014,876B2).

Applicant asserts that Zeyuan et al. does not indicate which substance in the extract has a BTG reducing effect. In addition, since the amount of catechins in the extract does not correlate with a BTG reducing effect, a person of ordinary skill in the art would not expect that catechins would contribute to the reduction of BTG.

Zeyuan et al. teaches that both black tea and green tea extracts reduce blood triglycerides (BTG) and therefore it would have been obvious that any of the constituents of both green tea and black tea have BTG reducing effects.

Applicant asserts that Xia discloses a health-care food which is a mixture of oolong tea, Auricularia auricula-judae and malt powders to reduce the content of cholesterol and glyceride in the blood of a human body, without providing any evidence whatsoever. Based upon this disclosure, a person of ordinary skill in the art would not know which substance in this health-care food has the recited effect. The partial english translation provided by the applicant is not admitted as only a portion of the disclosure is provided.

Xia teaches that the health-care food which contain oolong tea provides for a reduction in triglycerides and therefore it would have been obvious to one skilled in the art that the constituents, such as oolong tea of the health-care food reduces the triglycerides in a human.

Applicant asserts that Suzuki et al. neither teaches nor suggests that EGCG3*Me and EGCG4*Me have BTG reducing effects. The reference of Suzuki et al. was not used to teach or suggest that EGCG3*Me and EGCG4*Me have BTG reducing effects but was used to teach that (-)- epigallocatechin-3-O-(3-O-methyl) gallate (EGCG3*Me) is extracted from the tea leaves of Tong ting oolong tea, Benihomare cultivar (black tea).

Applicant asserts that Iwasaki et al. does not disclose that BTG levels are reduced by consuming a beverage containing 5 mg or grater/100 mL of methylated catechins according to the present claim 1.

Iwasaki et al. teaches that the catechins found in Oolong tea are used in the healthy drink in an amount from 0.092 to 0.5 g per 100 ml (column 3, lines 16-20) and therefore it would have been obvious to one skilled in the art to use the amount of catechins found in the healthy drink of Iwasaki et al. for the functional beverage of Zeyuan et al. to reduce BTG as both disclosures teach of black tea health drinks.